

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**MICHAEL CARGILL; CTC HGC,
LLC,
*Plaintiffs***

V.

**BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND
EXPLOSIVES, STEVEN
DETTELBACH, IN HIS OFFICIAL
CAPACITY; MERRICK B.
GARLAND, IN HIS OFFICIAL
CAPACITY; UNITED STATES
DEPARTMENT OF JUSTICE,
UNITED STATES OF AMERICA,
*Defendants***

No. 1:22-CV-01063-DAE

ORDER

The parties dispute whether Plaintiffs should be entitled to discovery in support of the *ultra vires* claim they assert against Defendants. Dkt. 44 (The Parties’ Joint Statement on Discovery Positions); *see* Dkt. 1, at 13-14 (Count III of Plaintiffs’ Complaint, seeking “Equitable Relief for an Ongoing Violation of Federal Law”). The District Judge referred the matter to the undersigned to resolve the discovery dispute and to enter a scheduling order setting a schedule for the parties’ anticipated cross-motions for summary judgment. Dkt. 41. The Court set the matter for hearing, and after considering the parties’ filings, their arguments at the hearing, and the applicable law, the Court concluded that Plaintiffs are entitled to limited discovery in support of their equitable cause of action. *See, e.g., Texas v. U.S. Dep’t of Homeland*

Sec., No. 6:23-CV-00007, 2023 WL 2842760, at *3 (S.D. Tex. Apr. 7, 2023) (“One type of suit that can proceed against federal officers in their official capacities is a suit alleging a federal officer acted *ultra vires* of statutorily delegated authority. This is exactly the type of claim the Plaintiff States raise in their complaint. ... Therefore, the Court will permit extra-record discovery on the Plaintiff States’ *ultra vires* claim.” (internal citations, quotations, and modifications omitted)).

Accordingly, for the reasons stated on the record, the Court **ORDERS** the following schedule for discovery and for summary-judgment briefing:

Initial Disclosures	December 8, 2023
Discovery Complete	February 18, 2024
Plaintiffs’ Motion for Summary Judgment (20-page limit)	March 18, 2024
Defendants’ Combined Motion for Summary Judgment and Opposition (40-page limit)	April 29, 2024
Plaintiffs’ Combined Opposition and Reply (30-page limit)	June 10, 2024
Defendants’ Reply (10-page limit)	July 1, 2024

SIGNED November 14, 2023.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE